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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/717,566

11/21/2003

Herman Philip Godfried

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05/21/2008

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EXAMINER

HENDRICKSON, STUART L

ART UNIT

PAPER NUMBER

1793

NOTIFICATION DATE

DELIVERY MODE

05/21/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/717,566	Applicant(s) GODFRIED ET AL.	
	Examiner Stuart Hendrickson	Art Unit 1793	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-77 is/are pending in the application.
- 4a) Of the above claim(s) 56 and 62-74 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-55, 57-61 and 75-77 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/8/08</u> . | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1793

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 56 has been amended to reflect a new invention. Had this claim been earlier presented it would have been restricted- the diamond of claim 1 can be used in a materially different manner such as a cutting tool. The optical device has separate classification (class 356 possibly) and the diamond may be made by any process, not just by claim 62. Thus, it is a burden to search and an independent/distinct invention. For these reasons, it is considered withdrawn from consideration.

Claims 1-55, 57-61, 75-77 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Linares et al. 6582513.

The reference teaches highly pure and perfect CVD diamond- see col. 3 for example. Even though the properties are not reported, they are deemed possessed by the reference since the description of purity comports with the specification.

Claims 1-55, 57-61, 75-77 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Vichr et al. 5443032.

The reference teaches highly pure and perfect CVD diamond- see col. 10 line 55 for example. Even though the properties are not reported, they are deemed possessed by the reference since the description of purity comports with the specification.

The above references are taken to be representative of the high-purity diamond art. Hence, other references of interest are not applied in order to avoid duplication of rejection.

Claims 1-51, 53-55, 57-61, 75-77 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over JP 7-277890.

The portion provided teaches high quality diamonds with low nitrogen content. As above, no differences are seen. Concerning claim 35, the area is 'not given'.

Art Unit: 1793

Claims 1-51, 53-55, 57-61, 75-77 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Michler article.

The reference teaches, especially on pg. 188-190, excellent crystallinity and no long-range defects. The nitrogen content is not reported, however it is deemed possessed since the claims recite low levels of nitrogen impurity consistent with excellent grain diamond.

Applicant's arguments filed 2/20/08 have been fully considered but they are not persuasive.

Argument of the nitrogen content is not persuasive since Linares col. 6 and 9 teach high purity and low nitrogen. Vichr col. 6 bottom seeks to avoid nitrogen. Claim 58 translates to roughly 1 ppm nitrogen, not 300 ppb (given a density of 3.5 g/cc). Note claim 59- the claims are not really limited to what is argued. The argument of process steps is not persuasive, since the process is not elected. The fact that Vichr unites diamonds is not persuasive; this is not excluded by the claims. The references teach good purity and excellent structure; applicant should show a difference. The argument as to state of the art in 1992 or 1994 is not persuasive; it is what was known to one of ordinary skill at the time of applicants invention (ie, filing date). Prior to allowance, the IDS should be corrected (resubmitted) to show the dates of all the references.

Applicant's response necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

Art Unit: 1793

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to examiner Hendrickson at telephone number (571) 272-1351.

/Stuart Hendrickson/
examiner Art Unit 1793